REMARKS/ARGUMENTS

In the Office Action dated March 21, 2007, claims 1-28 were rejected under 35 U.S.C. § 112, ¶2, as being indefinite. Claims 1-7 and 15-28 were rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. Claims 1-28 were provisionally rejected under the doctrine of obviousness-type double patenting over claims 1-44 of copending Application NO. 10/730,892 in view of Dumarot et al., U.S. Patent No. RE38865 (Dumarot). Claims 1-4, 8-11, 15-18, and 22-25 were rejected under 35 U.S.C. § 102(b) as being anticipated by Dumarot. Claims 5, 6, 12, 13, 19, and 20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Dumarot in view of Applicant's Admitted Prior Art (APA). Claims 7, 14, and 21 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Dumarot in view of APA, and further in view of an article by Bowker, "Superior app management with JMX", JavaWorld, 6/8/2001 (Bowker). Claim 26 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Dumarot in view of Bowker. Claims 28 and 28 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Dumarot in view of Bowker, and further in view of APA. Claims 5-7, 12-14, 19-21, 27, and 28 were objected to. The drawings and the specification were objected to.

Regarding the objections to the drawings, the drawings and the specification have been amended in order to correct the items that were objected to in paragraphs 4, 5, and 6 of the Office Action. However, the Applicant respectfully traverses the requirement that Figs. 1, 4, and 5 be marked as --Prior Art-- because these drawings do not only illustrate that which is old. For example, as disclosed in the specification at page 19, lines 15-17, Fig. 4 illustrates elements of the present invention. Likewise, Figs. 1 and 5 illustrate systems in which the present invention may be implemented.

The disclosure and abstract have been amended as required by the Examiner.

Claims 1-28 are now pending in this application. The claims have been amended in order to overcome the objections, the rejections under 35 U.S.C. § 112, ¶2, 35 U.S.C. §101, and in order to further clarify the subject matter that the Applicant considers to be the invention. No new matter has been added.

Regarding the provisional double patenting rejection, as this rejection is currently provisional, copending Application No. 10/730,897 is allowed prior to allowance of the present application, the Applicant will file a Terminal Disclaimer in the present application.

The Applicant respectfully submits that claims 1-4, 8-11, 15-18, and 22-25 are not anticipated by Dumarot. Dumarot discloses a method of optimizing the operation of a computer system in running application programs in accordance with system capabilities, user preferences and configuration parameters of the application program. Dumarot discloses data an optimizer that optimizes an application by writing discrete records in an application configuration file stored on disk. Such a configuration file is disclosed as read by an application when the application starts and controls various performance characteristics of the application. By contrast, claims 1, 8, 15, and 22 require tuning a deployed application using received specified parameter values. Thus, claims 1, 8, 15, and 22 require tuning of a deployed (running and functional) application while it is running and functional, whereas Dumarot only discloses tuning of an application upon startup of the application. Claims 1, 8, 15, and 22 further require displaying an effect on system and application performance in real time. This is only possible when a deployed, running, and functional application is tuned, because when such an application is tuned, the effects of the tuning occur in real time. By contrast, Dumarot cannot disclose or suggest real time display of the effects of application tuning, since the tuning disclosed by Dumarot does not affect the application until the application starts up, not in real time.

Therefore, claims 1, 8, 15, and 22, and claims 2-4, 9-11, 16-18, and 23-25, which depend therefrom, are not anticipated by Dumarot.

The Applicant respectfully submits that claims 5, 6, 12, 13, 19, and 20 are not unpatentable over Dumarot in view of APA because even if Dumarot and APA were combined as suggested by the Examiner, the result still would not disclose or suggest the requirements of the claims. As discussed in relation to claims 1, 8, 15, and 22, from which claims 5, 6, 12, 13, 19, and 20 depend, Dumarot does not disclose or suggest tuning a deployed application or displaying an effect on system and application performance in real time. The subject matter identified by the Examiner as APA likewise does not disclose these requirements of the claims. Thus, even if Dumarot and APA were combined as suggested by the Examiner, the resulting combination still does not disclose or suggest tuning a deployed application or displaying an effect on system and application performance in real time. Therefore, claims 5, 6, 12, 13, 19, and 20 are not unpatentable over Dumarot in view of APA.

The Applicant respectfully submits that claims 7, 14, and 21 are not unpatentable over Dumarot in view of APA, and further in view of Bowker, because even if Dumarot, APA, and Bowker were combined as suggested by the Examiner, the result still would not disclose or suggest the requirements of the claims. As discussed in relation to claims 1, 8, 15, and 22, from which claims 7, 14, and 21 depend, Dumarot does not disclose or suggest tuning a deployed application or displaying an effect on system and application performance in real time. Likewise, APA and Bowker do not disclose these requirements of the claims. Thus, even if Dumarot, APA, and Bowker were combined as suggested by the Examiner, the resulting combination still does not disclose or suggest tuning a deployed application or displaying an

A/72169055.1

effect on system and application performance in real time. Therefore, claims 7, 14, and 21 are not unpatentable over Dumarot in view of APA, and further in view of Bowker.

The Applicant respectfully submits that claim 26 is not unpatentable over Dumarot in view of Bowker, because even if Dumarot and Bowker were combined as suggested by the Examiner, the result still would not disclose or suggest the requirements of the claims. As discussed in relation to claims 1, 8, 15, and 22, from which claim 26 depends, Dumarot do not disclose or suggest tuning a deployed application or displaying an effect on system and application performance in real time. Likewise, Bowker does not disclose these requirements of the claims. Thus, even if Dumarot and Bowker were combined as suggested by the Examiner, the resulting combination still does not disclose or suggest tuning a deployed application or displaying an effect on system and application performance in real time. Therefore, claim 26 is not unpatentable over Dumarot in view of Bowker.

The Applicant respectfully submits that claims 26 and 28 are not unpatentable over Dumarot in view of Bowker and further in view of APA, because even if Dumarot, Bowker, and APA were combined as suggested by the Examiner, the result still would not disclose or suggest the requirements of the claims. As discussed in relation to claims 1, 8, 15, and 22, from which claims 26 and 28 depend, Dumarot do not disclose or suggest tuning a deployed application or displaying an effect on system and application performance in real time. Likewise, Bowker and APA do not disclose these requirements of the claims. Thus, even if Dumarot, Bowker, and APA were combined as suggested by the Examiner, the resulting combination still does not disclose or suggest tuning a deployed application or displaying an effect on system and application performance in real time. Therefore, claims 26 and 28 are not unpatentable over Dumarot in view of Bowker and further in view of APA.

A/72169055.1

Each of the claims now pending in this application is believed to be in condition for allowance. Accordingly, favorable reconsideration of this case and early issuance of the Notice of Allowance are respectfully requested.
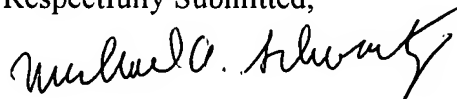
Additional Fees:

The Commissioner is hereby authorized to charge any insufficient fees or credit any overpayment associated with this application to Deposit Account No. 50-4047 (419111.0118).

Conclusion

In view of the foregoing, all of the Examiner's rejections to the claims are believed to be overcome. The Applicants respectfully request reconsideration and issuance of a Notice of Allowance for all the claims remaining in the application. Should the Examiner feel further communication would facilitate prosecution, he is urged to call the undersigned at the phone number provided below.

Respectfully Submitted,

Michael A. Schwartz
Reg. No. 40,161

Dated: August 21, 2007

Bingham McCutchen LLP
2020 K Street, N.W.
Washington, D.C. 20006-1806
(202) 373.6000 Telephone
(202) 373.6001 Facsimile

A/72169055.1

~~APPLICATION PERFORMANCE TUNING SERVER-SIDE COMPONENT~~

ABSTRACT

5 An application tuning server-side component, and a method, system, and computer program product for application tuning, provides application deployers with a single, unified facility for modifying the relevant parameters. ~~to achieve optimal performance, which makes the application tuning process simpler and easier, so that it can be performed by less skilled individuals and yet be~~

10 ~~performed more quickly by those less skilled individuals.~~ A method of tuning an application deployed in an application server comprises the steps of deploying the application in the application server, invoking an application tuning server-side component operable to retrieve information relating to application parameters to be tuned, receiving specifications of values of application tuning

15 parameters, and tuning the application using the received specified parameter values. The application tuning server-side component may be implemented using Java Management Extensions.

Fig.4

400
COMPUTER SYSTEM

404 INPUT/ OUTPUT	402A CPU	● ● ●	402N CPU	406 NETWORK ADAPTER

410 INTERNET/ INTRANET

408
MEMORY

108 HTTP LISTENER LAYER
109 VIRTUAL PATH MANAGER
110 APPLICATION SERVER LAYER
112 APPLICATIONS LAYER
114 ORB
~~410~~ 411 PERFORMANCE MEASURMENT OBJECTS
412 INTERFACE OBJECTS
414 OPERATING SYSTEM